

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35266

STATE OF IDAHO,)	2009 Unpublished Opinion No. 681
)	
Plaintiff-Respondent,)	Filed: November 18, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
STEVEN CLAY ANDERSON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael R. Crabtree, District Judge.

Judgment of conviction for delivery of a controlled substance, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Steven Clay Anderson appeals from his judgment of conviction for delivery of a controlled substance. Specifically, Anderson challenges the district court's order denying his motion to withdraw his guilty plea prior to sentencing. For the reasons set forth below, we affirm.

Anderson was charged with two counts of delivery of a controlled substance, I.C. § 37-2732(a)(1)(A), and two counts of conspiracy to deliver a controlled substance, I.C. § 18-1701, after he and his girlfriend sold methamphetamine to a confidential informant. Anderson was arraigned before the district court on October 13, 2005. On November 10, 2005, Anderson informed the district court that he would not waive his right to a speedy trial. The trial was thereafter continued on several occasions, in some cases, on motion by Anderson's attorney. However, Anderson never formally waived his right to a speedy trial throughout the proceedings. On April 11, 2006, Anderson filed a motion to dismiss due to a violation of his right to a speedy

trial. The record does not reflect that the district court ever ruled on Anderson's motion to dismiss, but the trial was continued once again. New counsel was appointed to represent Anderson, and the trial was continued to January 31, 2007. Several days before that date, Anderson entered an *Alford*¹ plea to one charge of delivery of a controlled substance, and the state dismissed the remaining charges.

Prior to sentencing, Anderson filed a motion to withdraw his guilty plea on the basis that it was not knowing and voluntary. After a delay caused by the preparation of transcripts from the change of plea hearing, appointment of another attorney to represent Anderson, requested continuances by trial counsel, and the death of the district court judge, the district court denied Anderson's motion. The district court sentenced Anderson to a unified term of seven years, with a minimum period of confinement of two years. The district court suspended sentence and placed Anderson on probation for three years. Anderson appeals.

Anderson argues that he demonstrated a just reason to withdraw his guilty plea prior to sentencing. Therefore, he contends that the district court should have liberally applied its discretion by allowing him to do so. Furthermore, he contends that the state failed to show that it would be prejudiced by the withdrawal of his plea. Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied. *State v. Freeman*, 110 Idaho 117, 121, 714 P.2d 86, 90 (Ct. App. 1986). Appellate review of the denial of a motion to withdraw a plea is limited to determining whether the district court exercised sound judicial discretion as distinguished from arbitrary action. *Id.* When a defendant seeks to withdraw his or her guilty plea before sentencing, he or she has the burden of showing a just reason for withdrawal of the plea. *State v. Ballard*, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1988). When the defendant has met this burden, the state may avoid withdrawal of the guilty plea by showing that it would be prejudiced as a result. *Id.*

As just cause for withdrawal of his guilty plea, Anderson argues that his right to a speedy trial was violated and, therefore, he "gave up" and pled guilty. Furthermore, Anderson claims that the psychological evaluation reveals a significant problem with his memory that raises concerns about his comprehension of the change of plea hearing.

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Anderson's claim that his impaired memory affected his comprehension of the change of plea hearing is belied by the record. The psychological evaluation states that Anderson was of normal intelligence and had no deficits of short-term or long-term memory. He understood the charges against him and the sentence he would likely receive. The evaluation also concluded that he had the ability to engage in rational and meaningful consideration of topics required of him in legal proceedings. Based on this evaluation and Anderson's responses to questions at the change of plea hearing, the district court concluded: "But everything here indicates to me that you had the present ability to understand and that you did understand, and that you participated in the process fully and completely to the best of your ability, and that it was satisfactory." Therefore, Anderson has failed to show that the district court abused its discretion by finding no just reason for withdrawal of Anderson's guilty plea on this issue.

Next we consider whether Anderson's claim that the alleged violation of his right to a speedy trial constituted a just reason for withdrawal of his guilty plea. A knowing and voluntary guilty plea waives all nonjurisdictional defects and defenses, whether constitutional or statutory, in prior proceedings. *See State v. Al-Kotrani*, 141 Idaho 66, 69, 106 P.3d 392, 395 (2005). This includes a waiver of a defendant's right to a speedy trial. *State v. Garcia*, 126 Idaho 836, 837, 892 P.2d 903, 904 (Ct. App. 1995). Anderson was advised at his change of plea hearing that by pleading guilty he would waive his right to a speedy trial. The record also reveals that Anderson was aware of his right to a speedy trial as he had a pending motion to dismiss on that basis before the district court at the time he changed his plea. Anderson's argument that he can now assert a right that he waived by pleading guilty as a basis for withdrawing that plea is circular and without merit. At the hearing on the motion to withdraw Anderson's guilty plea, the district court found: "I understand the essence of any case where you face criminal charges involves conflicted emotions, tough decisions to have to make, and hesitations on decisions. But at some point, a decision has to be made, and that point was reached in your case [at the change of plea hearing]." Anderson made the decision to plead guilty and waive any defects or defenses that he may have asserted. The district court did not abuse its discretion by denying Anderson's motion to withdraw his guilty plea on this basis. Because we conclude that Anderson failed to present a just reason for the withdrawal of his guilty plea, we do not further address the prejudice to the state by allowing Anderson to withdraw his plea.

The district court did not abuse its discretion by denying Anderson's motion to withdraw his guilty plea prior to sentencing. Accordingly, Anderson's judgment of conviction for delivery of a controlled substance is affirmed.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**